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9
10 **IN THE UNITED STATES DISTRICT COURT**
11
12 **FOR THE DISTRICT OF ARIZONA**

13 Hector Lopez, an individual
14
15 Plaintiff,

16 vs.

17 COII Bollweg; CO P. Swaney; CO
18 Bennett; CO Van Gundy; CO
19 Zeravica; SGT. Robinson; CO Alonso;
20 CO Caron Grant; COIII G. Suarez;
21 UNKNOWN French; UNKNOWN
22 Gold; UNKNOWN Haynes;
23 UNKNOWN Salas; CO C. Hopper;
24 CO Pinson; WARDEN Ron Credio;
25 DIRECTOR Charles Ryan, in their
26 individual and official capacities,

Defendants.

CASE NO.

COMPLAINT
(Civil Rights, Gross Negligence)

JURY TRIAL DEMANDED

HON.

Plaintiff Hector Lopez, by and through undersigned counsel, hereby alleges the following upon information and belief:

INTRODUCTION

This action arises out of an incident of botulism poisoning at Arizona State Prison Complex Eyman, SMU I, in July of 2012. Plaintiff consumed contaminated food and quickly began to exhibit symptoms of poisoning, along with three other

1 inmates who all consumed the same food. Plaintiff and the other three inmates
2 alerted prison staff to the serious symptoms they were experiencing. Prison staff
3 either ignored Plaintiff entirely or accused him of malingering, consuming
4 contraband, or having sexual intercourse with other prisoners, and repeatedly
5 denied him medical care. After approximately 8 days, Plaintiff was finally taken to
6 the hospital where he was given anti-toxin and his condition began to improve.
7 Plaintiff continues to suffer the effects of the toxin, and asserts that prompt
8 treatment would have prevented the severity of effects that he has experienced.
9
10
11

12 **PARTIES, JURISDICTION & VENUE**

- 13 1. Plaintiff Hector Lopez is an individual residing in Pima County, Arizona.
- 14 2. In July 2012, Plaintiff was an inmate under the care, custody, and control of
15 the Arizona Department of Corrections (hereinafter "ADC").
- 16 3. Plaintiff is not currently in custody.
- 17 4. All Defendants were administrators, employees or contractors of the Arizona
18 Department of Corrections at the time of the events complained of herein, and, on
19 information and belief, all reside in Arizona. All Defendants were acting under
20 color of state law at all relevant times herein. Additional details as to each
21 Defendant will be provided as soon as Plaintiff knows them. Plaintiff asserts that
22 if any of the Defendants are married, that all actions taken were on behalf of the
23 respective marital communities.
24
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26

1 5. Defendant Ryan is the Director of ADC, and as such has authority to set
2 policy and procedure for all ADC inmates, employees, and contractors.

3
4 6. Defendant Credio was the Warden of ASPC Eyman, SMU I at all times
5 relevant to the events described herein.

6
7 7. Defendants Bollweg, Sanchez, Suarez, Swaney, Bennett, Zeravica,
8 Robinson, Van Gundy, and Williams observed Plaintiff between July 25 and
9 August 2, 2012, and therefore were on notice, both through Plaintiff's requests for
10 help, as well as obvious signs and symptoms, that Plaintiff was suffering from a
11 severe illness that required immediate treatment.

12
13 8. Defendant Swaney coerced Plaintiff into lying about the cause of his illness
14 in order to get proper medical care.

15
16 9. Defendants Gold, Haynes, French, Salas, and Does 1-10 were ADC medical
17 staff at the time of the events complained of herein, and failed to properly
18 diagnose Plaintiff's serious medical condition.

19
20 10. Defendants Alonso, Suarez, Swaney, Credio, Hopper, Grant, Pinson, and
21 Ryan denied Plaintiff's requests to resolve his issue regarding his medical
22 treatment.

23
24 11. The acts and events hereinafter set forth occurred in Arizona.

25 12. Plaintiff's causes of action are for federal statutory civil rights claims
26 pursuant to 42 U.S.C. § 1983, and thereby give rise to federal question

1 jurisdiction pursuant to 28 U.S.C. § 1331. Pendant jurisdiction is further invoked
2 for the state claims, which arise out of the same set of facts, pursuant to 28 U.S.C.
3 § 1367.
4

5 **STATEMENT OF FACTS**

6 13. On or about Friday, July 20, 2012, Plaintiff consumed food that was shared
7 among four inmates: Plaintiff, Thomas Granillo, Enrique Montijo, and Robert
8 Aceves.
9

10 14. The food Plaintiff and three other inmates consumed was provided by the
11 Arizona Department of Corrections (hereinafter "ADC"), and was contaminated
12 with botulism.
13

14 15. All food consumed by Arizona inmates housed in state prisons is provided
15 by ADC.
16

17 16. Food that was contaminated with botulism was given to Plaintiff and other
18 prisoners by ADC.
19

20 17. Plaintiff and three other inmates who consumed the food began to feel ill
21 over the weekend of July 21 & 22, 2012.
22

23 18. On or about Wednesday, July 25, 2012, Plaintiff complained to, and was
24 observed by COII Bollweg, and taken to the medical unit attached to the prison
25 (hereinafter "medical unit"). On information and belief, Bollweg activated the
26 Incident Command System ("ICS"), indicating a life-threatening emergency.

1 19. On the same day, Unknown French checked Plaintiff's vital signs and
2 determined that he was not in need of treatment.

3
4 20. Defendant medical staff/contractors diagnosed Plaintiff as either having
5 consumed alcohol and/or drugs, or fabricated his symptoms, and he was again
6 returned to his cell.

7
8 21. Plaintiff volunteered a urine sample, which, on information and belief, was
9 taken and the results showed no alcohol or drugs in Plaintiff's system.

10 22. At some point, Plaintiff was seen by Unknown Salas, who denied that
11 Plaintiff needed to go to the hospital, and told Plaintiff, "You shouldn't be doing
12 drugs".

13
14 23. On or about July 25, 2012, on information and belief, Mr. Granillo was taken
15 to the hospital where it was discovered that he was suffering from botulism
16 poisoning. On information and belief, Mr. Granillo was placed in intensive care
17 where his heart stopped beating on two separate occasions.

18
19 24. On or about July 28, 2012, Plaintiff filled out a Health Needs Request (HNR)
20 despite having difficulty seeing due to the effects of the poison.

21
22 25. On the same day, Plaintiff gave his HNR to Unknown Haynes, and was seen
23 by Unknown French, who told Plaintiff that she/he was aware of Plaintiff's issue,
24 and that she was absolutely sure that it was not the same illness that Mr. Granillo
25 had.
26

1 26. From July 25 until July 29, 2012, Plaintiff complained to various ADC staff
2 that he needed to go to the hospital and stated that it was an emergency.

3
4 27. Between July 25 and August 2, 2012, Plaintiff's condition deteriorated, and
5 included: general weakness, increasing difficulty breathing, chewing,
6 swallowing, eating, walking, writing, and speaking.

7
8 28. On or about July 29, 2012, on information and belief, the Incident Command
9 System was activated again, indicating a life-threatening emergency.

10 29. Plaintiff was again seen by ADC medical staff, and again returned to his cell
11 without treatment.

12
13 30. Plaintiff wrote a letter to his family because he believed he was going to die.

14 31. Plaintiff specifically complained to COs Sanchez, Suarez, Van Gundy, and
15 Williams.

16
17 32. CO Williams specifically denied that Plaintiff's illness was caused by food
18 poisoning.

19
20 33. On or about July 30, 2012, CO Sanchez asked Plaintiff what was wrong with
21 him before Plaintiff said anything to her. Plaintiff replied, saying he was sick and
22 needed help. On information and belief, Sanchez failed to get help for Plaintiff.

23
24 34. On the same day, Plaintiff also complained to CO Suarez. On information
25 and belief, Suarez called medical and was told Plaintiff had already been seen and
26 nothing more would be done. On information and belief, Suarez did nothing

1 further to help Plaintiff.

2 35. On or about July 31, 2012, CO Williams spoke to Plaintiff at length at his
3 cell front, accused Plaintiff of lying, and said that Plaintiff would only be helped
4 if he told "the truth", i.e. that the illness was caused by alcohol or drugs.
5

6 36. On the same day, CO Williams brought one medical staff person (believed to
7 be Unknown Gold) and CO Bennett to Plaintiff's cell front. On information and
8 belief, the medical staff told Plaintiff that they had already checked Plaintiff's
9 vital signs and found no problems.
10

11 37. CO Bennett told Plaintiff that no one wanted to help Plaintiff.
12

13 38. On information and belief, Plaintiff was denied access to a licensed
14 physician until immediately before he was taken to the hospital.
15

16 39. Between approximately July 25 - August 2, 2012, various correctional
17 officers escorted Plaintiff to the medical unit and back to his cell without
18 treatment. On information and belief, these include CO Zeravica and Sgt.
19 Robinson.
20

21 40. When Sgt. Robinson came to the medical unit to escort Plaintiff back to his
22 cell, Plaintiff informed him that he was having extreme difficulty walking, to
23 which Sgt. Robinson responded that Plaintiff must walk or be slammed on the
24 floor and dragged back to his cell. Plaintiff complied to the best of his ability.
25

26 41. The next time Plaintiff was taken to the medical unit, a stretcher was

1 required because Plaintiff was entirely unable to walk. On information and
2 belief, a video recording was made of Plaintiff being removed from his cell on a
3
4 stretcher.

5 42. Between approximately July 25 - August 2, 2012, various correctional
6 officers came to Plaintiff's cell front, and accused Plaintiff of getting sick from
7
8 consuming homemade alcohol (a.k.a. "hooch"), taking "pills" or illegal drugs, or
9 from having sex with other prisoners.

10 43. CO Swaney told Plaintiff that he would get no help.

11 44. Plaintiff asked CO Swaney if Plaintiff could speak to a superior officer.

12 45. On information and belief, CO Swaney responded in the negative, adding
13
14 "suck my dick", and "shut the f**k up".
15

16 46. On or about August 2, 2012, Plaintiff was again taken to medical and was
17
18 seen by unknown medical staff.

19 47. On August 2, 2012, CO P. Swaney spoke to Plaintiff at the SMU I medical
20 unit and told him that he would only be taken to the hospital if he admitted to
21
22 consuming hooch.

23 48. Plaintiff lied and told CO Swaney that he had consumed hooch because he
24
25 believed he would die if not taken to the hospital.

26 49. On the same day, Plaintiff was taken to St. Luke's Hospital where he
remained for 7 days undergoing treatment.

1 50. On August 3, 2012, CO Swaney issued an Inmate Disciplinary Report to
2 Plaintiff for admitting to consuming hooch.

3
4 51. On August 15, 2012, Plaintiff sent an informal letter to COIII G. Suarez,
5 complaining about the delays in treatment.

6 52. Suarez responded that Plaintiff had been treated and that "inmates do not
7 have the right to dictate treatment or who provides treatment."
8

9 **COUNT I - Gross Negligence**

10 53. Plaintiff incorporates all previous paragraphs herein by reference.

11
12 54. Plaintiff asserts that Defendants, one or more, had a duty to ensure that the
13 food given to ADC inmates is safe to eat.

14 55. ADC's food was unsafe to eat and contaminated with botulism toxin.

15
16 56. All food consumed by ADC inmates is provided by ADC.

17 57. Therefore, Plaintiff asserts that under the doctrine of *res ipsa loquitur*, ADC
18 must have breached its duty.
19

20 58. Plaintiff states that he was injured by contracting botulism poisoning.

21 59. Plaintiff states that this breach was the actual and proximate cause of his
22 injuries.
23

24 60. Defendants were grossly negligent in failing to provide timely treatment for
25 the serious condition.

26 61. Defendants were grossly negligent in failing to provide uncontaminated

1 food.

2 **COUNT II - Deliberate Indifference**

3
4 62. Plaintiff incorporates all previous paragraphs herein by reference.

5 63. Defendants are liable under the Eighth and Fourteenth Amendments to the
6 U.S. Constitution for failure to adequately train ADC employees. Specifically,
7 the Defendants have a custom or policy of deliberate indifference in regards to
8 the medical needs of citizens that are in the care, custody, and control of ADC.

9
10 64. Defendants' training procedure is not adequate to recognize obvious medical
11 needs of inmates.

12
13 65. Defendants were aware that Plaintiff had a serious health problem.

14 66. Plaintiff alerted Defendants to his health problem via Plaintiff's HNRs, as
15 well as verbal complaints made by Plaintiff directly to various Defendants.

16
17 67. Other inmates repeatedly tried to get the Defendants' attention. They
18 screamed, banged on their cell doors, and otherwise asked the officers for
19 assistance for Plaintiff and the other ill inmates.

20
21 68. All Defendants who saw Plaintiff or read his HNRs and grievances between
22 July 25 and August 2, 2012 knew or should have known that Plaintiff required
23 urgent medical care.

24
25 69. All Defendants who saw Plaintiff or read his HNRs and grievances between
26 July 25 and August 2, 2012 knew or should have known that Plaintiff needed to

1 see a licensed physician capable of conducting an appropriate differential
2 diagnosis.

3
4 70. In accordance with their custom and policy, Defendants ignored Plaintiff and
5 the other inmates' pleas for help.

6
7 71. In fact several Defendants called Plaintiff names and accused him of
8 malingering, consuming contraband, and/or having intercourse with other
9 inmates.

10
11 72. Plaintiff states that these customs and policies were in violation of the Eighth
12 Amendment right to be free from cruel and unusual punishment. *Estelle v.*
13 *Gamble*, 429 U.S. 97, 104, 97 S. Ct. 285 (1976).

14
15 73. As a result of Defendants' deliberate indifference, he suffered from the
16 effects of the toxin longer than necessary, feared for his life, and will continue to
17 suffer physical and emotional effects longer into the future than if he had
18 received proper medical care.

19
20 WHEREFORE, Plaintiff prays for relief as follows

- 21 1. For actual damages, in an amount to be determined at trial,
22 2. For compensatory damages, in an amount to be determined at trial,
23 3. For punitive damages, in an amount to be determined at trial,
24 4. For attorney's fees and costs, and
25 5. Awarding such other and further relief as the Court deems just and
26

1 proper under the circumstances.

2
3 DATED this 22nd day of July, 2013.

4 WEEKS LAW FIRM PLLC

5
6 s/Stephen M. Weeks
7 Stephen M. Weeks, Esq.
8 Attorneys for Plaintiff
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